

CR 37. FAILURE TO MAKE DISCLOSURE OR COOPERATE IN DISCOVERY: SANCTIONS

(a)(2) Motion for Order Compelling Disclosure or Discovery.

(A) A good faith effort to confer with a party or person not making a disclosure or discovery requires a face-to-face meeting or a telephone conference. If the court finds that counsel for any party, or a party proceeding pro se, willfully refuses to confer, fails to confer in good faith, or fails to respond on a timely basis to a request to confer, the court may take action as stated in GR 3 of these rules.

(B) Motion. A motion for an order compelling disclosure or discovery may be filed and noted in the manner prescribed in CR 7(d)(3). Alternatively, the parties may, by agreement, utilize the expedited procedure set forth in this subsection. If the parties utilize this procedure, the motion may be noted for consideration for the day the motion is filed. After the parties have conferred, a party may submit any unresolved discovery dispute to the court through the following procedure:

(i) The moving party shall be responsible for preparing and filing a joint CR 37 submission to the court. An example of a CR 37 submission is attached as Appendix B.

(ii) The moving party may draft an introductory statement, setting forth the context in which the dispute arose and the relief requested. Each disputed discovery request and the opposing party's objection/response thereto shall be set forth in the submission. Immediately below that, the moving party shall describe its position and the legal authority which supports the requested relief.

The moving party shall provide the opposing party with a draft of the CR 37 submission and shall also make the submission available in computer-readable format.

(iii) Within five judicial days of receipt of the CR 37 submission from the moving party, the opposing party shall serve a rebuttal to the moving party's position for each of the disputed discovery requests identified in the motion. The opposing party may also include its own introductory statement. The opposing party's rebuttal for each disputed discovery request shall be made in the same document and immediately following the moving party's statement in support of the relief requested. If the opposing party no longer objects to the relief requested, it shall so state and respond as requested within five judicial days from the date the party received the draft CR 37 submission. If the opposing party fails to respond, the moving party may file the CR 37 submission with the court and state that no response was received.

(iv) The moving party's reply, if any, in support of a disputed discovery request

shall follow the opposing party's rebuttal for such request in the joint submission and shall not exceed one half page for each reply.

(v) The total text that each side may contribute to a joint CR 37 submission shall not exceed twelve pages. This limit shall include all introductory or position statements, and statements in support of, or in opposition to, a particular request, but shall not include the discovery request itself.

(vi) Each party may submit declarations for the purpose of attaching documents to be considered in connection with the submission and to provide sufficient information to permit the court to assess expenses and sanctions, if appropriate. If a party fails to include information sufficient to justify an award of fees, it shall be presumed that any request for fees has been waived. A declaration shall not contain any argument.

(vii) The moving party shall prepare a proposed order that identifies each of the discovery requests at issue, with space following each of the requests for the court's decision. This proposed form of order shall be provided to the court in a computer-readable format to be specified by the court.

(viii) The moving party shall be responsible for filing the motion containing both parties' positions on the discovery disputes, any declarations submitted by the parties, and the proposed form of order. The moving party shall certify in the motion that it has complied with these requirements. The submission shall be noted for consideration on the date of filing and shall be described as a "CR 37 Joint Submission."

(b) [Reserved].

(c) [Reserved].

(d) [Reserved].

(e) [Reserved].

(f) [Reserved].

(g) [Reserved].

[Effective May 1, 1992; amended effective September 30, 1994; July 1, 1997; December 1, 2000; January 1, 2002.]

Comment

Local Rule CR 37, sub-sections (a) through (d), are substantially identical to the corresponding portions of the federal rule, as amended in 1993. The local rule deletes requirements in federal rules 37(a)(2)(A) and (B), and 37(d), that the parties "meet and confer" before bringing certain discovery motions. Local rule 37(h) imposes that requirement as to virtually all discovery motions. Local rule 37(b)(2) also deletes a reference to rule 26(f). Sub-sections (e) and (f) of the federal rule no longer exist. W.D.Wn. has deleted sub-section (g) of the federal rule because, in this district, the parties are not required to meet, confer and develop a discovery plan at the outset of the case.

[Comment adopted effective September 30, 1994.]